

October 1969

## Law Clerks and the Unauthorized Practice of Law

Mitchell Davidson

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>



Part of the [Law Commons](#)

---

### Recommended Citation

Mitchell Davidson, *Law Clerks and the Unauthorized Practice of Law*, 46 Chi.-Kent L. Rev. 214 (1969).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol46/iss2/6>

This Notes is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [dginsberg@kentlaw.iit.edu](mailto:dginsberg@kentlaw.iit.edu).

## LAW CLERKS AND THE UNAUTHORIZED PRACTICE OF LAW

The problem of the unauthorized practice of law is a problem of using the processes of the law to define and protect a monopoly.

If laymen can do some jobs better or more cheaply and rapidly than lawyers, and they are specialized jobs with articulate interests behind them, can a lawyer's monopoly-by-law stand up?<sup>1</sup>

The aforementioned problem does not permit of easy solution. Despite the existence of statutes prohibiting the unauthorized practice of law,<sup>2</sup> laymen nonetheless continue to perform legal services. The courts are frequently required to settle disputes concerning activities which are prohibited by the statutes or conduct which impliedly falls within their penumbræ. In most instances, the courts have a wide latitude in determining which activities should be proscribed and which should be permitted to continue.<sup>3</sup>

This article presents one of the more general aspects of the unauthorized practice of law problem and a more detailed analysis of one field of controversy. Law clerks, the group examined, exemplify a situation typical of those throughout the entire subject.<sup>4</sup> It is the purpose of this article to place the unauthorized practice of law problem respecting law clerks in perspective within a broader

<sup>1</sup> Llewellyn, *The Bar's Troubles and Poulitices—and Cures?*, 5 Law & Contemp. Prob. 104, 107 (1938).

<sup>2</sup> All of the state and District of Columbia statutes relating to the unauthorized practice of law are compiled in ABF Project on the Unauthorized Practice of Law, *Unauthorized Practice Statute Book* (1961).

<sup>3</sup> Indeed, many courts have claimed that their power to regulate the practice of law is inherent and that legislative enactments merely supplement this jurisdiction. That the power of the judiciary to regulate the practice of law is a corollary of the judiciary's right to discipline attorneys see, e.g., *People ex rel. Illinois State Bar Ass'n v. People's Stock Yards Bank*, 344 Ill. 461, 176 N.E. 901 (1931); *Opinion of the Justices to the Senate*, 279 Mass. 607, 180 N.E. 725 (1932); *Grand Rapids Bar Ass'n v. Denkema*, 290 Mich. 56, 287 N.W. 377 (1939); *Fitchette v. Taylor*, 191 Minn. 582, 254 N.W. 910 (1934); *State ex rel. Johnson v. Childe*, 139 Neb. 91, 295 N.W. 381 (1941); *In re Baker*, 8 N.J. 321, 85 A.2d 505 (1951); *Rhode Island Bar Ass'n v. Automobile Serv. Ass'n*, 55 R.I. 122, 179 A. 139 (1935); *In re McCallum*, 186 Wash. 312, 57 P.2d 1259 (1936).

That the judiciary is the sole arbiter of what constitutes the practice of law see, e.g., *Lowell Bar Ass'n v. Loeb*, 315 Mass. 176, 52 N.E.2d 27 (1943); *Hulse v. Criger*, 363 Mo. 26, 247 S.W.2d 855 (1952).

That the public would suffer if the courts were powerless to regulate the practice of law see, e.g., *Clark v. Austin*, 340 Mo. 467, 101 S.W.2d 977 (1937); *Washington State Bar Ass'n v. Washington Ass'n of Realtors*, 41 Wash. 2d 697, 251 P.2d 619 (1952).

<sup>4</sup> See 7 Am. Jur. 2d *Attorneys at Law* § 78 (1963) (appearance by laymen before administrative bodies); *Taft v. Amsel*, 23 Conn. Super. 225, 180 A.2d 756 (1962) (lawyer licensed outside state); Annot., 106 A.L.R. 548 (1937) (automobile clubs); Annot., 84 A.L.R. 749 (1933), suppl., 157 A.L.R. 522 (1945) (collection agents and agencies); 7 Am. Jur. 2d *Attorneys at Law* § 80 (1963); Annot., 69 A.L.R.2d 404 (1960) (corporate fiduciary); 7 Am. Jur. 2d §§ 83-85 (1963); Annot., 171 A.L.R. 355 (1947) (heir-hunting); 7 Am. Jur. 2d *Attorneys at Law* § 87 (1963); Annot., 114 A.L.R. 1506 (1938) (practice of medicine, dentistry or law through radio broadcasting stations, newspapers or magazines); Annot., 9 A.L.R.2d 797 (1950) (preparation of tax return and negotiation with tax officials); 7 Am. Jur. 2d *Attorneys at Law* § 79 (1963); Annot., 85 A.L.R.2d 184 (1962) (title insurance companies); 7 Am. Jur. 2d *Attorneys at Law* § 77 (1965).

problem which confronts the bar in its effort to adapt its traditional methods to a radically changed and rapidly changing society.

### BACKGROUND

In order to understand the unauthorized practice of law, we must recognize a fundamental fact. The practice of law by unqualified persons antedated the organized bar. The bar arose as a result of a public demand for the exclusion of those who assumed to practice law without adequate qualifications.<sup>5</sup> Thus, the prohibition of the unauthorized practice of law is coextensive with the very existence of the legal profession.

Laymen and, indeed, some lawyers are apt to view the prohibition against the unauthorized practice of law as one of self-preservation for the benefit of the organized bar alone. Though the legal community is not unaware of the threat to the existence of an independent legal profession in this country, the underlying purpose in regulating the practice of law is to protect the public from the gravely untoward consequences of unqualified and unskilled legal services.

### PRACTICES AND PRACTITIONER

It would be extremely difficult, if not unwise, to frame one explicit definition of the practice of law which would endure. Under our system of jurisprudence such practice must change with the changing business and social order. Perhaps it does not admit of comprehensive and satisfactory definition.<sup>6</sup>

Thus, a sharp distinction cannot be drawn between the fields of the lawyer and layman. Some matters lie in the penumbra. For that reason the courts "examine the facts and circumstances of each case and determine as best [they] can the line of demarcation, often shadowy and wavering, which defines the functions of the legal advisor from those of the layman."<sup>7</sup> Through the medium of a series

<sup>5</sup> Rhode Island Bar Ass'n v. Automobile Serv. Ass'n, 55 R.I. 122, 179 A. 139 (1935).

<sup>6</sup> Unsatisfactory definitions of the practice of law, too broad to be of use in defining the activities in which a layman may engage, are as numerous as the cases which involve the issue. Illustrative of the multitude of unsatisfactory definitions is *In re Duncan*, 83 S.C. 186, 187, 65 S.E. 210, 211 (1909):

According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings on behalf of clients before judges and courts, in addition, conveyancing, the preparation of legal instruments of all kind, and, in general, all advice to clients and actions for them in matters connected with the law.

*See, e.g.,* *People ex rel. Illinois State Bar Ass'n v. Schafer*, 404 Ill. 45, 87 N.E.2d 773 (1949); *Fitchette v. Taylor*, 191 Minn. 582, 254 N.W. 910 (1934); *In re Pace*, 170 App. Div. 818, 156 N.Y.S. 641 (1915); *State v. Bryan*, 98 N.C. 644, 4 S.E. 522 (1887); *Commonwealth v. Jones & Robbins, Inc.*, 186 Va. 30, 41 S.E.2d 720 (1947); 7 Am. Jur. 2d *Attorneys at Law* § 73 (1963); 7 C.J.S. *Attorney & Client* § 3(g) (1937); *Black's Law Dictionary* 1335 (4th ed. 1951); *Bouvier's Law Dictionary* 2649 (8th ed. 1914).

<sup>7</sup> *State ex rel. Johnson v. Childe*, 139 Neb. 91, 95, 295 N.W. 381, 384 (1941). *See, e.g.,* *Gardner v. Conway*, 234 Minn. 468, 48 N.W.2d 788 (1951); *Creditor's Serv. Corp. v. Cummings*, 57 R.I. 291, 190 A.2d (1937); *State ex rel. Junior Ass'n of Milwaukee Bar v. Rice*, 236 Wisc. 38, 294 N.W. 550 (1940).

of cases in which various clerking activities have been held to constitute the practice of law, a scheme unfolds.

### PRACTICE OUTSIDE COURT

In *Johnson v. Davidson*,<sup>8</sup> the California Supreme Court was first confronted with a question of unauthorized practice involving a clerk. An unlicensed law clerk was hired by an attorney to draft pleadings and other papers required by the latter in his practice. Specifically, the clerk prepared complaints, cross-complaints, demurrers, orders for and affidavits of publication of summons in divorce cases, bills of sale and bankruptcy petitions. Her remuneration was a fixed percentage of the net receipts of her employer. The court held her activities did not constitute the practice of law and that an unlicensed law clerk may take charge of the "management" of the work to be done in a law office only to the extent of drafting pleadings and other papers required by an attorney. Apparently, the courts will tolerate the situation wherein a clerk administers work ultimately executed by a licensed attorney.

A subsequent leading Washington decision is demonstrative of the above conclusion. In *Ferris v. Snively*,<sup>9</sup> the questioned activities of an unlicensed law clerk included his preparing wills, leases, mortgages, bills of sale and contracts upon his own initiative and without the supervision of his employer. Further, he handled uncontested probate matters, examined abstracts of title and rendered oral opinions thereon. Recognizing that the line of demarcation between such work as a law clerk may lawfully perform and that which he may not lawfully do cannot be drawn with absolute precision, the court nonetheless held the plaintiff to be engaged in the practice of law. The court stated that the activities of a law clerk would not constitute the practice of law so long as they were limited to work of a preparatory nature, such as would allow the employing attorney to continue the matter to a finished product by his personal examination and approval or by additional effort. "The work must be such, however, as loses its separate identity and becomes either the product of, or else merged in the product of, the attorney himself."<sup>10</sup> It would seem imperative that the clerk's efforts do not maintain an independent identity.

In *State ex rel. Wyoming State Bar v. Hardy*,<sup>11</sup> an unlicensed law clerk had been engaged in the preparation and drafting of wills together with the giving of advice and counsel regarding such wills for twenty-five years. He personally represented himself to the public as an intermediary between attorney and client competent and qualified to render legal services. Notwithstanding that the clerk's activities were thoroughly supervised by his employer, the court held that the in-

<sup>8</sup> 54 Cal. App. 251, 202 P. 159 (1921), overruled on other grounds, *Crawford v. State Bar of California*, 54 Cal. 2d 659, 7 Cal. Rptr. 746, 355 P.2d 490 (1960).

<sup>9</sup> 172 Wash. 167, 19 P.2d 942 (1933).

<sup>10</sup> *Id.* at 176, 177, 19 P.2d at 945, 946.

<sup>11</sup> 61 Wyo. 172, 156 P.2d 309 (1944).

interviewing of clients to obtain information to preserve legal rights is the duty of an attorney.

Where a non-lawyer clerk holds himself out as authorized to practice law and undertakes to answer legal questions or render other legal services of his own skill and ingenuity, albeit he gives answers prepared by his employer or renders services under the supervision of his employer, it would appear to the client as though the clerk himself managed the work and furnished a completed product. The law clerk's work would not have lost its separate identity. Thus, supervision notwithstanding, the decision in *Hardy* is consistent with the view expressed in *Johnson v. Davidson*<sup>12</sup> and *Ferris v. Snively*.<sup>13</sup>

The Texas case of *Clements v. State*,<sup>14</sup> is illustrative of a law clerk's illegal practice of law. Clements was a salaried clerk who independently received and consulted with a client. He gave legal advice which resulted in the client's filing for a divorce asking for alimony and a division of community property. Clements accompanied the client to the courthouse and to the office of her husband's attorney where he was introduced as her counsel. Clements argued that because he was a salaried employee he was not violating the prohibition against the unauthorized practice of law. Notwithstanding that Clements did not charge and receive a fee directly from the client, the court fined him one hundred dollars.

Another example of unauthorized practice is *Crawford v. State Bar of California*.<sup>15</sup> Crawford unsuccessfully sought an annulment of a resolution by the board of governors of the state bar that he be publicly reprovved for violating a rule of professional ethics prohibiting a member of the bar from aiding or abetting the unauthorized practice of law.

Crawford had employed his disbarred attorney-father in his law office. Both father and son did, in fact, enter into a declaration of co-ownership. Both publicly represented themselves as partners in the practice of law. Nominally a law clerk, Crawford's father conferred directly with clients respecting the preparation of deeds and on tax matters. He handled an entire probate matter including conferences with the client and the dissolution of a partnership. Further, he handled an escrow that involved considerable controversy as to compliance with the underlying contract. Crawford, relying on the case of *In re McKelvey*,<sup>16</sup> ar-

<sup>12</sup> 54 Cal. App. 251, 202 P. 159 (1921), overruled on other grounds, *Crawford v. State Bar of California*, 54 Cal. 2d 659, 7 Cal. Rptr. 746, 355 P.2d 490 (1960).

<sup>13</sup> 172 Wash. 167, 19 P.2d 942 (1933).

<sup>14</sup> 141 Tex. Crim. 108, 147 S.W.2d 483 (1940).

<sup>15</sup> 54 Cal. 2d 659, 7 Cal. Rptr. 746, 355 P.2d 490 (1960).

<sup>16</sup> 28 Cal. App. 426, 255 P. 834 (1927). The California Appellate Court was petitioned for reinstatement by an attorney disbarred for a period of ten years. The State maintained that petitioner should be denied reinstatement on the grounds that he was engaged in the practice of law during his term of disbarment.

The petitioner was engaged at a small salary as a law clerk. In that capacity, he examined questions of law, drafted pleadings and wrote briefs. In addition, he gave advice to his employer's client on "incidental matters of slight importance." The evidence failed to establish that McKelvey had been obtaining clients or that he retained former clients. The court held that the petitioner was not engaged in the practice of law.

gued that his individual activities constituted "incidental matters of slight importance." Rejecting Crawford's contention, however, the court concluded that individual acts as such were unimportant. Crawford's "entire course of conduct" was determinative.<sup>17</sup> Though the employer-son had knowledge of the existence of his father's work, he was unaware of its progress or disposition. The father acted independently.

Measured by the criterion presented in the *Johnson*<sup>18</sup> and *Ferris*<sup>19</sup> cases, there is no question that Clements and Crawford were unauthorized practitioners of law. Both represented themselves as competent and qualified legal advisors. Both did more than administer work ultimately executed by their respective employers. Their activities exceeded work of a preparatory nature in that their employers failed to continue the matters to a completed product by examination and approval or by additional effort on their part. Their efforts neither lost their separate identities nor became the product of or merged in the product of their respective employers. Their work bore a stamp of skill and ingenuity as though it was managed by a licensed attorney.

#### PRACTICE BEFORE THE COURT

Illustrative of the restrictions placed upon the law clerk in the courtroom is the Illinois case of *People v. Alexander*.<sup>20</sup> An unlicensed law clerk, in collaboration with opposing counsel and at the request of the court, prepared and pre-

<sup>17</sup> The performance by a layman of a single transaction or a series of isolated transactions pertaining to the law generally will not be considered as engaging in the "practice" within the purview of state licensing or tax requirements. See, e.g., *McCargo v. State*, 1 So. 161 (1887) (retired lawyer handled claim for a neighbor, endeavoring to settle or compromise, thereafter filing and conducting a suit in court without charge for his services); *People v. Weil*, 237 App. Div. 118, 260 N.Y.S. 658 (1932) (defendant prepared a bill of sale and chattel mortgage for a neighbor; evidence lacking that he had ever practiced or appeared as an attorney in court, made a business of practicing or that he had ever held himself out to the public as entitled to practice law); *In re Umble's Estate*, 117 Pa. Super. 15, 177 A. 340 (1935) (preparation by trust company acting through officer not authorized to practice law of a single will naming trust company as executor). *Contra*, *People v. Ring*, 26 Cal. App. 2d Supp. 786, 70 P.2d 281 (1937) (giving legal advice for a fee); *In re Baker*, 8 N.J. 321, 338, 85 A.2d 505, 513, 514 (1951) (drawing of a will in which defendants were made executors and residuary legatees and drawing of a power of attorney giving them control of testator's estate in the event of his incompetency) wherein it was stated:

We do not consider it to be necessary that a person be engaged in a "course of conduct" over a period of time in order to be engaged in the practice of law. To impose such a test would result in the wholly absurd situation of this court being called upon to determine how many wills a layman may draw, or how many "clients" he may advise, or, more bluntly, how many times he may defraud the public by his impositions before he be deemed to be engaged in the practice of law and thus subject to the superintending power of this court. . . . There is no sound reason why the doing of a single act calling for the skills and learning of an attorney does not constitute the practice of law just as most certainly the performance of a single operation by a surgeon constitutes the practice of medicine. The amateur at law is as dangerous to the community as an amateur surgeon would be.

<sup>18</sup> 54 Cal. App. 251, 202 P. 159 (1921), overruled on other grounds, *Crawford v. State Bar of California*, 54 Cal. 2d 659, 7 Cal. Rptr. 746, 355 P.2d 490 (1960).

<sup>19</sup> 172 Wash. 167, 19 P.2d 942 (1933).

<sup>20</sup> 53 Ill. App. 2d 299, 202 N.E.2d 841 (1st Dist. 1964).

sented an order "spreading the mistrial of record." He later appeared to inform the court that the case had not been settled and that his employer, a licensed attorney representing one of the parties to the litigation, was engaged in a trial elsewhere. On behalf of his employer, he requested a continuance. The State argued that an appearance by a layman before a court in which he apprises the court of an engagement of counsel or transmits data respecting the availability of counsel or the status of litigation is the unauthorized practice of law.

In reversing the superior court order adjudging the defendant in contempt for unlawfully practicing law, the Illinois Appellate Court dismissed the preparation and presentation of the order as a ministerial rather than judicial act. Alexander entered a record of what had transpired as opposed to rendering or pronouncing a judgment. He did not exercise the independent discretion, judgment or skill characteristic of a judicial act. He merely performed in a prescribed manner abiding by the mandate of a superior legal authority.

Admittedly, Alexander did make a motion for continuance. Nevertheless, the court concluded that, as the making of such motions could not be considered "managing" litigation, it did not constitute the practice of law. Quoting with approval the case of *Toth v. Phillipson & Co.*,<sup>21</sup> judicial cognizance was taken of the exigencies of the situation in Cook County wherein numerous trial courts sit contemporaneously and it is impossible for a trial attorney to answer each court call in person or to employ a force sufficient to try every case as it is called. The court could not

[a]dd to the heavy burden of lawyers who in addition to responding to trial calls must answer pretrial calls and motion calls—all held in the morning—by insisting that a lawyer must personally appear to present to a court a motion for continuance on the grounds of engagement or inability to appear because of illness or other unexpected circumstances. To reduce the backlog, trial lawyers should be kept busy actually trying lawsuits and not answering court calls.<sup>22</sup>

It would appear the Illinois court has adopted and applied the criterion by which out-of-court activities are adjudged the practice of law in its determination of what constitutes the practice of law in the courtroom. "Management," the criterion made applicable to situations of unauthorized practice involving non-lawyer clerks by the initial case on the subject (*Johnson v. Davidson*)<sup>23</sup> was cited as the basis for the *Alexander* decision. That point at which law clerks begin managing litigation in the courtroom is the point at which they exceed work of a preparatory or ministerial nature; it is the point at which their work will begin to assume an identity of its own; and it is the point at which it will no longer be possible for the work to become the product of or else merged in the completed product of a licensed attorney.

<sup>21</sup> 250 Ill. App. 247 (1st Dist. 1928).

<sup>22</sup> 53 Ill. App. 2d 299, 304, 202 N.E.2d 841, 844 (1st Dist. 1964).

<sup>23</sup> 54 Cal. App. 251, 202 P. 159 (1921), overruled on other grounds, *Crawford v. State Bar of California*, 51 Cal. 2d 659, 7 Cal. Rptr. 746, 355 P.2d 490 (1960).

But, the Appellate Court for the First District, in its determination of whether an activity constitutes the practice of law, has looked beyond the inherent character of the activity itself. Significance is attached to attendant circumstances of the case.

### PROBLEM

Ours is a society of law. The rights of all are marked by law and to protect such rights recourse to the courts and those entitled to practice law is a vital and frequent occurrence. The need for the professional advice and service of a lawyer is a reality of life. Yet a wide breach separates the need and its satisfaction. One reason for the breach is the standards of the legal profession which prohibit intermediaries, however dependable and trustworthy, providing legal services.<sup>24</sup>

Indeed, today there is an acute shortage of lawyers throughout the nation. When we contrast the five year periods beginning in 1950 and 1960 and ending in 1955 and 1965 respectively, the number of young men and women studying law increased by 65,611 but the number of total admissions to the bar decreased by 1,235. In 1966, there was a population to lawyer ratio of 625 to one.<sup>25</sup> Further, not all persons admitted to the bar are available as counsel to the public. In 1966, only sixty-seven percent of the total number of attorneys were in private practice in individual practitioner, partner or associate positions.<sup>26</sup>

In *Johnson v. Avery*,<sup>27</sup> the United States Supreme Court affirmed the conclusion of the district court that "[f]or all practical purposes, if . . . prisoners cannot have the assistance of a 'jailhouse lawyer' their possibly valid constitutional claims will never be heard in any court."<sup>28</sup> Although it did not involve law clerks, the significance of this case for our purposes is found in the thesis underlying the decision. It is emphatically expressed in the concurring opinion of Mr. Justice Douglas wherein he states:

[I]t is becoming abundantly clear that more and more of the effort in ferreting out the basis of claims and the agencies responsible for them and in preparing the almost endless paperwork for their prosecution is work for laymen. There are not enough lawyers to *manage* or supervise all of these affairs . . . . (Emphasis added.)

[The] traditional closed-shop attitude [of the legal profession] is utterly out of place in the modern world . . . .

The cooperation and help of laymen, as well as of lawyers, is necessary . . . .<sup>29</sup>

<sup>24</sup> Cheatham, Availability of Legal Services: *The Responsibility of the Individual Lawyer and the Organized Bar*, 12 U.C.L.A. L. Rev. 438 (1965).

<sup>25</sup> ABF, The 1968 Lawyer Statistical Report (1967); United States Bureau of the Census, Statistical Abstract of the United States (90th ed. 1969). For a statistical treatment of the years 1930-1956 see Smith, *The Bar is Not Over-Crowded; Some Facts About an Ancient Legend*, 44 A.B.A.J. 1054 (1958).

<sup>26</sup> Statistical Abstract of the United States, *supra* note 25.

<sup>27</sup> 393 U.S. 483, 89 S. Ct. 747 (1969).

<sup>28</sup> 252 F. Supp. 783, 784 (1966).

<sup>29</sup> 393 U.S. 483, 491, 498, 89 S. Ct. 747, 752, 755 (1969).



And in *Hackin v. Arizona*,<sup>80</sup> wherein appellant, a layman, appeared in a state habeas corpus proceeding on behalf of an indigent prisoner, Mr. Justice Douglas, dissenting, said:

The supply of lawyer manpower is not nearly large enough.

Full-fledged representation in a battle before a court or agency requires professional skills that laymen lack; and therefore the client suffers, perhaps grievously, if he is not represented by a lawyer. But in the intermediate zone where the . . . [law clerk] commonly operates, is there not room for accommodation?<sup>81</sup>

### CONCLUSION

The practice of law has not been opened to the uneducated, unskilled and irresponsible who lack perspective and the orientation which comes from a thorough knowledge and understanding of legal concepts and legal processes.

The judiciary's answer to the critical deficiency in the number of attorneys

<sup>80</sup> 389 U.S. 325 (1967).

<sup>81</sup> *Id.* at 328, 329, 330. See *Cowern v. Nelson*, 207 Minn. 642, 646, 647, 290 N.W. 795, 797 (1940) wherein it was concluded:

It is the duty of this court so to regulate the practice of law and to restrain such practice by laymen in a common sense way in order to protect primarily the interests of the public and not to hamper and burden such interests with impractical technical restraints no matter how well supported such restraint may be from a standpoint of pure logic.

*Cf. Conway-Bogue Realty Inv. Co. v. Denver Bar Ass'n*, 135 Colo. 398, 312 P.2d 998 (1957) wherein the preparation of receipts, options, deeds, promissory notes, deeds of trust, mortgages, releases of encumbrances, leases and notices terminating tenancies coupled with the giving of advice or explanations as to the legal effect thereof was held to constitute the practice of law yet an injunction was denied. Public convenience and welfare won over logic.

See generally Cahn & Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 Notre Dame Law., 927, 934, 951 (1966):

Finally, with respect to manpower, we have created an artificial shortage by refusing to learn from the medical and other professions and to develop technicians, nonprofessionals and lawyer-aides—manpower roles to carry out such functions as: informal advocate, technician, counsellor, sympathetic listener, investigator, researcher, form writer, etc.

[T]he possibility of advancing the cause of justice through increasing lay involvement in fact finding, adjudication and arbitration, should not be sacrificed *a priori* out of fear of abuse.

Some states, aware of the acute shortage of lawyers, have utilized the abilities of supervised qualified law students to advise indigents and represent them in limited circumstances. Approximately twenty states and the District of Columbia presently allow law students to argue cases before the courts: Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas and Wyoming.

See also *In re Legal Aid Society of the City of Albany*, 27 App. Div. 2d 687, 277 N.Y.S.2d 632 (1967); *In re Cornell Legal Aid Clinic*, 26 App. Div. 2d 790, 273 N.Y.S.2d 444 (1966).

And see Monaghan, *Gideon's Army: Student Soldiers*, 45 B.U.L. Rev. 445 (1965); Cleary, *Law Students in Criminal Law Practice*, 16 De Paul L. Rev. 1 (1966); McRae & Linde, *An Emerging Joint Venture: Lawyers and Social Workers*, 48 J. Am. Jud. Soc'y 231 (1965); Ginsberg & Shiffman, *Manpower and Training Problems in Combating Poverty*, 31 Law & Contemp. Prob. 159 (1966); Broden, *A Role for Law Schools in OEO's Legal Services Program*, 41 Notre Dame Law. 898 (1966).

is found in those matters which are adequately served only by a lawyer's peculiar skill and knowledge. On the other hand, those matters that can be mastered by a law clerk are not being unreasonably restricted to the lawyer.

What has been accomplished is something of a common-sense accommodation. The practice of law has been limited to include only those functions which are exclusively legal and not to comprehend the whole field properly legal. The encroachment of non-lawyer clerks into the practice of law has been brought to a halt, within a margin of safety, at those functions which, though properly, are not exclusively legal. As to exclusively legal services, those requiring extensive legal education and professional training, there is tolerated no competition from persons not admitted to the bar.<sup>32</sup> But as to services properly legal in nature, those preparatory or ministerial matters which will lose their separate identities when continued to a completed product, the licensed attorney has been forced to relinquish his monopoly.

MITCHELL DAVIDSON

<sup>32</sup> See Ashley, *The Unauthorized Practice of Law*, 16 A.B.A.J. 558 (1930).